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| APPLICATION NO.                                                     | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 09/932,322                                                          | 08/17/2001  | James P. Beltzer     | DYX-018.1 US        | 5654             |
| 26161                                                               | 7590        | 08/24/2005           | EXAMINER            |                  |
| FISH & RICHARDSON PC<br>P.O. BOX 1022<br>MINNEAPOLIS, MN 55440-1022 |             |                      | CHISM, BILLY D      |                  |
|                                                                     |             | ART UNIT             | PAPER NUMBER        |                  |
|                                                                     |             | 1654                 |                     |                  |

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 09/932,322             | BELTZER ET AL.      |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | B. Dell Chism          | 1654                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-14,24-28,35 and 39-60 is/are pending in the application.
- 4a) Of the above claim(s) 10-14,24-28,35,39-50 and 52-59 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 9,51 and 60 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02/03/05.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This Office Action is in response to Applicants' paper filed 06 May 2005. Claims 9-14, 24-28, 35, and 39-60 are pending. Claims 9, 51 and 60 are currently considered, and claims 10-14, 24-28, 35, 39-50 and 52-59 are withdrawn from consideration as being drawn to non-elected subject matter.
2. The Examiner would like to thank Applicants for the telephonic interview regarding possible allowable material and amendments to withdrawn claims, specifically cancellation of claims to polynucleotides (claims 35 and 56, and amending claim 53 to read SEQ ID NO: 9. The Examiner would like to state that after the interview updated searches provided prior art that reads on other species of the genus of claimed polypeptides.
3. The rejections and/or objections made in the prior office action 09 February 2005, which are not explicitly stated below, in original or modified form are withdrawn as obviated by amendment and/or traversal.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 9, 51 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Han et al. (Virology 1998, Vol. 251, pages 253-263). Han et al. teach a species of instantly claimed SEQ ID NO: 10. See page 254, Figure 1B for CRPV-HE and Figure 7 on page 261.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 9, 51 and 60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 was amended to add the limitations of consensus sequence M, however, consensus sequence M is to SEQ ID NO: 10 which is disclosed as also having the possible limitations of the consensus sequence J that is also drawn to SEQ ID NO: 10. Therefore, it is unclear as how SEQ ID NO: 10 is not capable of the possible arrangements as in the disclosure (see the sequence listings as filed). Claims 51 and 60 are rejected for depending from the indefinite claim 9.

***Conclusion***

8. No claims are allowed. As indicated in the previous office action, the elected species SEQ ID NO: 163 is allowable. However, searches of additional species yielded prior art comprising instantly claimed species; therefore, all claims not drawn to the species found in the prior art are withdrawn from consideration.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Art Unit: 1654

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to B. Dell Chism, whose telephone number is (571) 272-0962. The examiner can normally be reached on M-F 08:30 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, PhD can be reached on (571) 272-0974.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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BDC



B. DELL CHISM  
PATENT EXAMINER



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